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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,809	12/29/2000	George A. Durden	36968/198826	5336

7590

06/02/2005

Scott P. Zimmerman  
P.O. Box 3822  
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EXAMINER
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BROWN, RUEBEN M

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/751,809	DURDEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Reuben M. Brown	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-9 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-9 and 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 1/6/2005 have been fully considered but they are not persuasive. In the discussion of the rejection of claims 6-8, applicant appears to assert that the Official Notice taken by examiner in the previous Office action does not cover the claimed subject matter. Examiner respectfully disagrees with this assertion, and points out that 'viewer scene selection', is a subset or is included within 'scene selection', which examiner took Official Notice of in the previous Office Action. In the obvious statement made, it was pointed out, "It would have been obvious to modify Block with the well known technique of direct viewer scene selection, at least for the desirable benefit of allowing the user to customize the viewing experience as much as possible", emphasis added.

Thus in support of the Official Notice taken, Lavallee is provided. This prior art reference Lavallee, clearly teaches direct viewer scene selection, as discussed in the previous Office Action.

With respect to the rejection of claims 9 & 19, applicant argues that the Cragun teaches away from Block, and thus the references are not properly combinable. Examiner respectfully disagrees. As applicant points out, the ratings information in Block may be transmitted along

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with the corresponding TV program, or separately in an out-of-band channel, col. 5, lines 12-16.

An EPG channel clearly reads on and is within the scope of an out-of-band channel.

Applicant also argues on page 9 that Cragun downloads an EPG, but does not transmit ratings information combined with programming. This point is moot, since this is not the nature of the 103 rejection. The 103 rejection is that given a teaching (Block) of transmitting ratings information in an out-of-band channel, separate from the broadcast program itself, that it would have been obvious to utilize a teaching of transmitting the ratings information within an EPG which is an out-of-band channel, (Cragun), at least for the desirable advantage of providing a wider range of sources of the ratings, as taught by Cragun.

Applicant asserts on page 10, that if Block were modified by Cragun, then Block would have his principle of operation impermissibly changed to download EPG's. However, again it is pointed out that Block clearly states that the ratings information, i.e. TIL, which is used to operate the invention, may be transmitted with the video signal (in-band) or separate from the video signal (out-of-band). Thus, in no way does Block teach that the TIL could not be transmitted within an EPG, such as taught by Cragun. Block teaches that in the out-of-band version, the TIL is transmitted on a different frequency. Therefore, applicant's discussion regarding the changing the operation of Block is speculation and not supported by evidence.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlucci, (U.S. Pat # 5,191,645).

Considering claim 20, the claimed method for formulating and delivering data for use in controlling presentation and portions, comprising receiving frames of program data, each frame associated with a discrete portion of the program, the program data comprising one of content data, control data and both content and control data is met by the disclosure of Carlucci, col. 4, lines 15-40. The claimed feature of the program data allowing the viewer to select alternate content for use in the program is broad enough to read on the discussion of Carlucci that the viewer is enabled make a customized (edited) version of a movie or broadcast event, by selecting and/or rearranging various scenes (which are comprised of a sequence of frames), see col. 14, lines 4-35 & col. 15, lines 1-40.

The additionally claimed feature of accessing the alternate content selected by the viewer and replacing a portion of the program with the alternate content is met by the operation of Carlucci, for example, see col. 16, lines 1-32.

Considering claim 21, Carlucci teaches that the content may be stored locally and accessed by the viewer from a local device, col. 4, lines 15-65 & col. 5, lines 7-35.

Considering claim 22, the feature of indicating when the program has been modified by alternate content reads on the discussion in Carlucci that different versions of broadcasts available to the viewer and any identification associated with the various versions; see Fig. 10; col. 14, lines 36-68.

Considering claims 23 & 24, the claimed icon that indicates when the portion of program has been modified is broad enough to read on the discussion in Carlucci that icons are used by the viewer to select and manipulate the various scenes in the video production; col. 15, lines 1-68.

***Claim Rejections - 35 USC § 103***

4. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Block, (U.S. Pat # 6,675,374), in view of Lavalley, (U.S. Pat # 5,737,552).

Considering amended claim 6, the claimed method for formulating and delivering data for use in controlling the presentation of a program and portions thereof comprising formulating frames of program data and associating each frame with a discrete portion of the program, reads

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on the disclosure in Block, which teaches that the video program may have labels identifying and rating the video program as a whole, (general information labels 220) and also the frames of the video program on an individual frame-by-frame basis, (frame specific information 230), col. 5, lines 17-52. Block goes on to discuss that the frame specific information 230 relates to various parameter of the frames and thereby meets the limitation of 'wherein the program data comprises content data, attribute data or both'; see col. 6, lines 1-35.

The claimed feature of 'delivering the program data to a transmission facility and distributing the program data to viewers' is broad enough to read on the programming and labeling data being delivered to the modulator/transmitter 50 and it being transmitted to subscriber, (Fig. 1; Fig. 2; col. 3, lines 55-67; col. 4, lines 8-20).

Regarding the amended claimed feature of wherein the content data describes the attributes of the discrete portion of the video program to which they are associated, the labels TIL in Block meet the claimed limitation, see col. 4, lines 46-61; col. 6, lines 1-35 & col. 10, lines 24-38.

As for the additionally claimed feature of the alternate scenes selected by the viewers, Block teaches that the alternate scenes are selected by the system, based upon the desires of viewer, but not explicitly by the viewer and are thus at least indirectly selected by the viewer. Nevertheless, Lavaltee teaches that a viewer may choose an alternate scene, particularly when disinterested in the current scene; Fig. 1; col. 2, lines 51-64; col. 5, lines 1-35 & col. 10, lines 9-

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59. It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Block with the well known technique of direct viewer scene selection, at least for the desirable benefit of allowing the user to customize the viewing experience as much as possible, as taught Lavallee, Abstract & col. 4, lines 16-24.

Considering claim 7, Block teaches displaying a graphic message to a viewer informing of modification, col. 17, lines 60-67 thru col. 18, lines 1-10. The claimed feature also reads on the mask code generating a mask (i.e., shape to be overlaid over a portions of a video screen), which clearly indicates to the viewer that the video presentation is modified, col. 18, lines 42-55.

Considering claim 8, in light of the rejection presented in claim 6, and the graphic mask taught by Block, (col. 18, lines 1-55), it would have been obvious for one of ordinary skill in the art at the time the invention was made, to operate Block & Lavallee such that the scene selected by the viewer is indicated, at least for the purpose of confirming or assuring the viewer of his/her selection.

5. Claims 9 & 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Block, in view of Cragun, (U.S. Pat # 5,973,683).



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Considering claims 9 & 19, Block teaches that the TIL may be transmitted as part of the video signal or on an out-of-band channel, (col. 5, lines 8-17) but does not explicitly discuss its transmission with an EPG. However, Cragun '683 teaches that the content data rating the portions of a program may be transmitted as part of an EPG, (col. 10, lines 1-36). It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify Block with the feature of providing the content/rating data as part of an EPG, instead of with the video picture for the advantage of providing the user with a wider range of rating sources (other than the broadcaster), particularly independent rating sources, as taught by Cragun '683 (col. 9, lines 53-67 thru col. 10, lines 1-21 & col. 14, lines 47-67).

### *Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Reimer Provides a reference that teaches a viewer creating a personalized version of a movie by directly selecting alternate scenes, col. 10, lines 1-20.

B) Abecassis Selection of customized movie based upon viewer preferences.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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**Any response to this action should be mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**or faxed to:**

(703) 872-9306, (for formal communications intended for entry)

**Or:**

(703) 746-6861 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the  
examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290.

The examiner can normally be reached on M-F (9:00-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's  
supervisor, Christopher Grant can be reached on (571) 272-7294. The fax phone numbers for the  
organization where this application or proceeding is assigned is (703) 872-9306 for regular  
communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding  
should be directed to the receptionist whose telephone number is (703) 305-4700.

Reuben M. Brown

  
HAITRAN  
PRIMARY EXAMINER